



State of New Jersey

Department of Environmental Protection
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James E. McGreevey
Governor

file
Passaic
River
Kenny
Callahan
Conce
cc: Morgan Patten
Laposta
Bradley M. Campbell
Commissioner
Tel. # (609) 292-2885
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September 22, 2004

Honorable Jane M. Kenny
Regional Administrator
United State Environmental Protection Agency
Region II
290 Broadway
New York, New York 10007-1866

Colonel Richard J. Polo, Jr.
United States Army Corps of Engineers
26 Federal Plaza
New York, New York 10278-0090

Dear Administrator Kenny and Colonel Polo:

On January 25, 2004 the New Jersey Department of Environmental Protection (NJDEP), the New Jersey Department of Transportation, Office of Maritime Resources (NJDOT/OMR), and the Passaic Valley Sewerage Commissioner (PVSC) entered into a Cooperative Agreement relating to PVSC's participation in the Feasibility Study for the Lower Passaic River Restoration Project as a full partner and sponsor. A copy of the Agreement is enclosed.

I am writing to convey NJDEP's position that PVSC should be included as a full project sponsor in all facets and elements of the Feasibility Study, and accordingly request that you accept PVSC as a full partner and sponsor through their signing on to the Feasibility Cost Sharing Agreement for the project.

Sincerely,

Bradley M. Campbell
Commissioner

c. Stuart Piken, USACE
Richard Gimello, NJDOT

V/ASSTCOM/Lower Passaic River Kenny-Polo Letter

IN THE MATTER OF
THE LOWER PASSAIC RIVER

AND

THE PASSAIC VALLEY SEWERAGE
COMMISSIONERS.

COOPERATION AGREEMENT

This COOPERATION AGREEMENT is entered into by and between the Commissioner of the NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION ("NJDEP"); THE NEW JERSEY DEPARTMENT OF TRANSPORTATION, OFFICE OF MARITIME RESOURCES ("NJDOT/OMR"); and the PASSAIC VALLEY SEWERAGE COMMISSIONERS (hereinafter the "PVSC"), a body politic and corporate under the laws of the State of New Jersey:

I. STATEMENT OF PURPOSE.

1. By entering into this COOPERATION AGREEMENT ("Agreement"), the mutual objectives of NJDEP, NJDOT/OMR, and PVSC are:

a. to enter into a cooperative partnership for the purpose of addressing pollution and injuries to natural resources in the Lower Passaic River; and

b. to provide funding for the purpose of conducting studies of the Lower Passaic River.

II. DEFINITIONS.

2. Whenever the terms listed below are used in this Agreement, the following definitions shall apply:

a. "Lower Passaic River" will be the 17 miles of the lower Passaic River from the Dundee Dam in Paterson downstream to and including its confluence with Newark Bay and any expansion or extension of the Lower Passaic River Area determined by the United States Environmental Protection

Agency ("EPA"), the U.S. Army Corps of Engineers ("Army Corps"), NJDEP or any natural resource trustee having an interest in the Passaic River.

b. "Parties" means NJDEP, NJDOT/OMR, and PVSC.

c. "PVSC" means the Passaic Valley Sewerage Commissioners, a body politic created by act of the New Jersey State Legislature in 1902 to reduce pollution in the Passaic River and tributaries (N.J. Law L.1902, c.49, p. 195).

III. BACKGROUND.

Contamination of the Lower Passaic River

3. As a result of more than a century of industrial production in the Lower Passaic River, the bottom sediments and other natural resources along portions of the Lower Passaic River are contaminated with various hazardous substances including cadmium, copper, lead, mercury, nickel, zinc, polyaromatic hydrocarbons ("PAHs") bis(2-ethylhexyl) phthalate, polychlorinated biphenyls, dichlorodiphenyl-trichloroethate, and 2,3,7,8-Tetrachloro-dibenzo-p-dioxin ("2,3,7,8-TCDD" or "dioxin").

4. Many of the hazardous substances that are in the sediment in the Lower Passaic River, specifically the dioxin, PCBs, DDT, heavy metals, and polyaromatic hydrocarbons bioaccumulate and/or biomagnify in the ecological food chain in this environment.

V. TERMS OF COOPERATION.

5. NJDEP and NJDOT/OMR agree that PVSC shall participate in the Lower Passaic River Restoration Project Feasibility Study conducted under the Water Resources Development Act and the Comprehensive Environmental Response, Compensation and Liability Act of 1980. Pending future negotiations, PVSC will either be a "Partner" or a "Local Sponsor" for the Feasibility Study depending on the selected mechanism of participation. NJDEP and NJDOT/OMR shall (i) provide the Army Corps and EPA with a copy of this agreement identifying PVSC as a partner or potential local sponsor in the Feasibility Study, (ii) if local sponsorship is pursued, a new Feasibility Cost Sharing Agreement (FCSA) would be prepared between USACE, NJDOT/OMR and PVSC identifying NJDOT/OMR and PVSC as local sponsors, and (iii) include PVSC as a party to the Memorandum of Agreement (MOA) for the Feasibility Study.

6. Within 30 days from the date of the signing of the MOA or the new FCSA, PVSC shall make available the sum of \$2,000,000.00 to be applied toward the Feasibility Study. The specific process for payment of such funds will be outlined in either the MOA or the FCSA.

7. NJDEP, NJDOT/OMR, and PVSC agree to coordinate their activities relating to the Feasibility Study of the Lower Passaic River, and agree to enter into such other agreements and arrangements as may be appropriate for accomplishing that purpose.

VII. GENERAL PROVISIONS.

8. This Agreement represents the entire integrated agreement between the parties with respect to its subject matter. No modification or waiver of this Agreement shall be valid except by written amendment duly executed by NJDEP, NJDOT/OMR, and PVSC.

9. The Parties agree that by entering into this Agreement, they make no admission of wrongdoing or liability relating to the Lower Passaic River.

10. If any part or provision of this Agreement is determined to be invalid or unenforceable under applicable law by a court of competent jurisdiction, then that part or provision shall be ineffective only to the extent of such invalidity or unenforceability, without affecting in any way the remaining parts or provisions of this Agreement.

11. This Agreement shall be governed and interpreted under the laws of the State of New Jersey.

12. This Agreement shall be binding on NJDEP, NJDOT/OMR and PVSC and their successors and assigns.

13. Except as otherwise stated in this Agreement, nothing in this Agreement shall be construed as limiting any legal, equitable or administrative remedies or defenses which PVSC may have under any applicable law or regulation. PVSC reserves all its rights under federal and state law.

14. This Agreement may be signed and dated in any number of counterparts, each of which shall be deemed an original, and such counterparts shall together be one and the same document.

15. This Agreement shall be effective upon its execution by NJDEP, NJDOT/OMR, and PVSC.

THE NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION

Date: January 27, 2004BY: [Signature]

Signature

Bradley M. Campbell

Print Full Name Signed Above

Commissioner

Title

NEW JERSEY DEPARTMENT OF
TRANSPORTATION, OFFICE OF
MARITIME RESOURCES

Date: 1/22/04BY: [Signature]

Signature

Richard Gimello

Print Full Name Signed Above

Executive Director

Title

PASSAIC VALLEY SEWERAGE
COMMISSIONERS

Date: January 14, 2004BY: [Signature]

Signature

Robert J. Davenport

Print Full Name Signed Above

Executive Director

Title

